

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Redesignation of the 17.7-19.7 GHz Frequency)
Band, Blanket Licensing of Satellite Earth) IB Docket No. 98-172
Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz) RM-9005
Frequency Bands, and the Allocation of Additional) RM-9118
Spectrum in the 17.3-17.8 GHz and)
24.75-25.25 GHz Frequency Bands for)
Broadcast Satellite-Service Use)

To: The Commission

CONSOLIDATED OPPOSITION TO REQUESTS FOR RELIEF

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby opposes both the Petition for Interim Relief filed by the Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association on November 2, 1998 (the "TIA Petition"), and the Emergency Request for Immediate Relief filed by the Independent Cable & Telecommunications Association on November 5, 1998 (the "ICTA Request").¹ Neither the TIA Petition nor the ICTA Request offers adequate justification for the Commission to revoke its well-reasoned decision to preserve the current state of the 18 GHz sub-bands pending completion of the above-captioned

¹ GE Americom was not served with copies of these filings, and only recently obtained the pleadings. GE Americom acted expeditiously to prepare and submit this opposition once it received and reviewed the TIA Petition and the ICTA Request. To the extent necessary, GE Americom requests leave to file its opposition at this time.

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proceeding. The Commission's action was clearly necessary to protect satellite systems' access to 18 GHz spectrum. Accordingly, both the TIA Petition and the ICTA Request must be rejected.

BACKGROUND

GE Americom has a strong interest in this proceeding because it has been authorized by the Commission to launch and operate the GE*Star geostationary satellite system in the Ka-band.² GE Americom's access to sufficient, usable downlink spectrum is critical to ensure the viability of the GE*Star system and other geostationary fixed satellite service ("GSO/FSS") systems licensed in that band. Such systems will offer consumers a dependable source of high-speed data, voice and video transmission.

On September 18, 1998, the Commission proposed revisions to the allocation of spectrum in the bands around 18 GHz in an attempt to better accommodate the spectrum requirements of a variety of services, including downlinks for Ka-band GSO/FSS systems.³ To accomplish this, the *Notice* generally proposed to adopt separate allocations for bands to be used by satellites and terrestrial systems.

² *GE American Communications, Inc.*, DA-970 (Int'l Bur. rel. May 9, 1997).

³ *See Notice of Proposed Rule Making, Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, IB Docket No. 98-172 (released September 18, 1998) ("Notice").

As part of its proposal, the Commission also took steps to protect the use of bands for satellite services by changing its treatment of terrestrial applications in bands where GSO/FSS systems will have primary status. *See Notice* at ¶ 40. Specifically, the Commission indicated that applications filed after the release of the *Notice* for terrestrial services in such bands would be accepted and processed, but proposed to treat operations pursuant to such applications as secondary.

Two parties -- TIA's Fixed Section and ICTA -- now have requested that the Commission rescind this safeguard and guarantee that even new terrestrial applicants in these bands would be afforded permanent co-primary status. Because such a revocation is inconsistent with the purpose of the *Notice*, would effectively prejudge the outcome of the *Notice*, and does not advance the public interest, the Commission should reject both petitions.

I. TIA AND ICTA MISCHARACTERIZE THE COMMISSION'S ACTION

As an initial matter, both TIA and ICTA mischaracterize the action taken by the Commission here. Both parties describe it as a "freeze" on terrestrial applications.⁴ The parties cite to a number of occasions in which the Commission decided not to accept and process applications for a service or set of services in a

⁴ ICTA Request at 1, 9 (FCC action amounts to *de facto* freeze); TIA Petition at 2-3 (same).

given frequency band. TIA and ICTA go on to allege that the factual circumstances here are distinguishable and do not warrant a “freeze.”⁵

In fact, the Commission’s actions here cannot fairly be characterized as a freeze. The *Notice* makes clear that the Commission will continue to accept and process applications for terrestrial facilities in the 18 GHz bands. The only restriction the Commission has imposed is to specify that terrestrial facilities licensed pursuant to applications filed after the release of the *Notice* will not be guaranteed primary status in these bands. Thus, terrestrial service providers can continue to pursue expansion by filing applications for new service links. They simply must decide whether to do so in light of the Commission’s proposed re-designation of spectrum for use by satellite services.

By not imposing an outright freeze on terrestrial applications, the Commission attempted to accommodate terrestrial services to the extent reasonable under the circumstances. It allowed them to continue to deploy new links, subject only to the condition that such links be coordinated in the future with satellite services. Because the Commission did not impose a freeze here, the case law pertaining to application freezes that is cited by TIA and ICTA does not apply.

⁵ ICTA Request at 11 n.28 & Attachment C; TIA Petition at 5-7.

II. THE COMMISSION'S ACTION WAS NECESSARY TO PRESERVE SATELLITE SYSTEMS' ACCESS TO THE 18 GHZ BAND

In any event, the Commission's action, however it is characterized, was clearly justified by the need to protect the availability of spectrum for satellite systems. The Commission recognized that satellite technology has longer lead times than those for terrestrial services. *Notice* at ¶ 9. Accordingly, the Commission needed to act now in order to prevent spectrum needed for satellite services from being saturated with terrestrial operations.

The arguments made by TIA and ICTA only confirm the wisdom of and necessity for the Commission's decision. ICTA, for example, lists in an attachment to its pleading over 250 microwave links that wireless cable operators either have filed or plan to file in the near future.⁶ Had the Commission not acted, all these links would have been eligible for co-primary status with satellite services.

If the Commission had set a future "cut-off" date for terrestrial applications to qualify for primary status in the band, the situation could have been much worse. Terrestrial operators would then have had every incentive to prepare and submit as many applications as possible for new facilities in the time prior to the cut-off. Again, the ICTA pleading refers to proposals for over 250 microwave links. It is hard to imagine how many new proposals of private cable operators

⁶ ICTA Request at Attachment B. This information directly conflicts with ICTA's assertions elsewhere in its pleading that wireless cable operators file a limited number of applications each year. *See id.* at 11 (claiming that private cable operators file only "125 or so" applications each year).

alone might be filed during the pendency of a potentially very lengthy proceeding had the Commission set a future cut-off date for such proposals to receive co-primary treatment. As such applications, according to ICTA, take only six months to prepare, grandfathering each until the final band plan has been resolved would be tantamount to abandoning any possibility that GSO/FSS could find substantial unencumbered spectrum even in the band that is now proposed for its exclusive primary use.⁷

TIA and ICTA also present other evidence that reinforces the assumptions underlying the Commission's decision. Specifically, both parties confirm that coordination between terrestrial services and satellite links is extremely difficult due to the sensitivity of the satellite services to interference. *See* TIA Petition at 5; ICTA Request, Attachment A at 2. This evidence clearly supports the Commission's determination that continuing to accord new applications for terrestrial service co-primary status would effectively make the spectrum unavailable for satellite requirements.

Such a result would be entirely inconsistent with the public interest. The purpose of this proceeding is to enable the Commission to reach a reasoned decision about how best to allocate scarce spectrum among many competing

⁷ ICTA argues that wireless cable operators are unlikely to file speculative applications because of the time and money that must be invested prior to an application being submitted to the FCC. ICTA Request at 11-12. However, the problem facing the Commission is not limited to speculative applications. Instead, the problem arises from the fact that under the policies prior to issuance of the *Notice*, any terrestrial facility has effective priority over satellite service links because of the time lag necessary to implement satellite facilities.

services. Grant of the instant requests would make that impossible, because it would allow terrestrial operators to foreclose satellite operations in the affected bands.

CONCLUSION

In this proceeding, the Commission's goal is to balance and provide for the needs of a variety of industries, including the requirements of GSO/FSS systems for sufficient unencumbered spectrum. The Commission attempted to accommodate the needs of terrestrial services to the extent possible by permitting them to continue to file applications, even in spectrum which the Commission has proposed allocating to satellite services on a sole primary basis. The requests of TIA and ICTA for relief from the Commission's decision not to accord terrestrial applications filed after the *Notice* primary status, if granted, would effectively prejudge the outcome of this proceeding by making spectrum unavailable for satellite services.

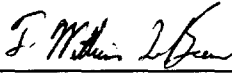
For the foregoing reasons, the Commission should reject both the TIA Petition and the ICTA Request and maintain its decision in paragraph 40 of the *Notice* not to grandfather post-*Notice* terrestrial applications in the 18 GHz band.

Respectfully submitted,

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November 16, 1998

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I hereby certify that copies of the foregoing Consolidated Opposition were mailed, postage prepaid this 16th day of November, 1998 or hand delivered where denoted by an asterisk, to the following persons:

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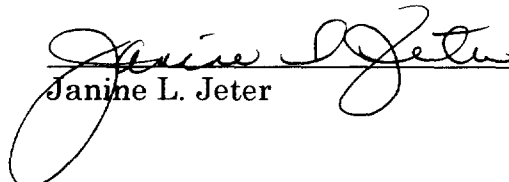
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